IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6971 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAICHANDBHAI NARANBHAI SANSI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6971 of 2003

MR PREM H SINGH for Petitioner No. 1

Mr. R.C. Kodekar, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/06/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Singh for the petitioner and Mr. R.C.Kodekar, learned AGP for the respondents. This petition was admitted by this court by issuing rule thereon on 22nd May, 2003 with a direction to list the matter for final hearing on 7th June, 2003.

In this petition, the petitioner has challenged the impugned order of detention dated 1st December, 2002 passed by the District Magistrate, Dahod under the PASA Act,1985. In this petition, affidavit in reply has been filed by the detaining authority as well as the State Government and the copies thereof have been served upon the petitioner.

Brief facts of the present petition are to the effect that three offences have been registered against the petitioner dated 4.10.2001, 17.1.2002 and 28.8.2002 at Dahod Rural Police Station under the provisions of the Bombay Prohibition Act. In all the three offences, the petitioner has been released by the competent court on bail. Statements of the secret witnesses recorded on 25.11.2002 by the senior PSI, Dahod Rural has been verified by the Dy.S.p. on 27.11.2002. Second statement of the secret witness recorded on 26.11.2002 was verified by the Dy. S.P. on 27.11.2002. Third statement of the secret witness recorded on 26.11.2002 was verified by the Dy. S.P. on 27.11.2002 and thereafter on 30.11.2002, detaining authority verified the same and on the next day i.e. 1.12.2002, impugned order of detention has been passed against the petitioner which was executed on 3.12.2002.

Learned advocate Mr. Singh appearing for the petitioner has submitted that the petitioner has challenged the impugned order of detention on various grounds raised in the memo of petition. He submitted that the detaining authority has verified the statements of the secret witnesses on 30.11.2002 and on the very next day i.e. 1.12.2002, mechanically, passed the impugned order of detention against the petitioner by simply relying upon the statements of the secret witnesses without examining the genuineness and credibility of the witnesses who gave their secret statements. He also submitted that the incident which has been narrated by the three secret witnesses have not been examined to the extent whether such incident has really happened or not. Therefore, according to him, the detaining authority has not applied his mind in respect of the witnesses whose statements were recorded by the sponsoring authority. He also submitted that no such exercise has been carried out by the sponsoring authority at the time of recording the statements of the secret witnesses. He also submitted that the as regards unregistered offences wherein statements have been recorded, no date has been given by the witnesses about such incident and that has not been considered by the sponsoring authority while recording the statements and also by the detaining authority. According to him, this

shows non application of mind and, therefore, impugned order of detention is required to be quashed and set aside on that ground alone.

On the other hand, learned AGP Mr. Kodekar appearing for the respondents has submitted that the subjective satisfaction has been rightly formed by the detaining authority on the basis of the material placed before him by the detaining authority. He also submitted that once the authority is satisfied on the basis of the material placed before him that there is no option but to pass the order of detention, then, the detaining authority is entitled to pass such an order on the basis of the material placed before him by the sponsoring authority. He also submitted that there is no need to call the witnesses personally by the detaining authority according to the view taken by the division bench of this court in the decision reported in 1989 (2) GLH 420. He also submitted that the detaining authority can rely upon the statements recorded by the sponsoring authority. He, therefore, submitted that according to the material placed before the detaining authority and looking to the three offences registered against the petitioner as stated above and three incidents referred to and narrated in the statements of the secret witnesses, the detaining authority was justified in passing the impugned order of detention against the detenu. According to him, all these facts are sufficient for the detaining authority to arrive at a subjective satisfaction and, therefore, there is no non application of mind on the part of the detaining authority and the impugned order of detention passed against the detenu does not require any interference of this court.

I have considered the submissions made by the learned advocates for the parties. I have also considered the decision referred to by the learned AGP Mr. Kodekar. From the record, from the facts of the present clear, it is clear that the statements recorded by the sponsoring authority were subsequently verified by the Dy. S.P. and ultimately the detaining authority. It is also clear that in all the three statements, date of incident is not given by the secret witnesses. The question is as to on the basis of which material, the sponsoring authority as well as the Dy. SP and the detaining authority has satisfied themselves that the incident narrated in three statement is real one. For that, no material has been placed on record. Looking to three registered offences under the Bombay Prohibition Act, not enough for passing the order of detention, three incidents unregistered offences were taken into account

by the detaining authority and in view of that, it was the burden upon the detaining authority to satisfy its conscience that the three alleged incidents were real. Mere verification of the fear expressed by the secret witnesses is not sufficient for claiming privilege under section 9(2) of the PASA Act, 1985. To claim the privilege under section 9(2) of the PASA Act and to satisfy that the statements given by the three secret witnesses in respect of the incident narrated in the statements, it is the duty of the detaining authority to consider the some further material as to whether the incidents narrated in the statements are real one or not. Considering the facts of the present case, as per my opinion, that part is lacking in this case. It is also equally important to note that on 30.11.2002, the detaining authority has verified the statement prima facie looking to the statement recorded by the sponsoring authority verified by the Dy. S.P. and by the detaining authority, merely wording of the statements to the extent that whatever statement made by the witness is correct, merely relying upon the witnesses that whatever statements they have made are correct, then, credibility of the witnesses giving such statement must have to be examined that the witness is real one, fear expressed by him is genuine and the incident narrated by him is real incident. In this case, credibility of the witnesses whose secret statements were recorded, has not been examined by the detaining authority. That part is lacking. The contention raised by the learned advocate Mr. Singh that the impugned order of detention has been passed on the very next date from the date of verification is covered by the decision of this court in the matter of Ranubhai Bhikhabhai Bharwad (Vekaria) versus State of Gujarat reported in 2000(3) GLR page 2696. The contention in that regard raised by the learned advocate Mr. Singh has been examined in the aforesaid decision. Similarly, the another contention as to whether the incident is real one or not and whether the credibility of the witnesses have not been examined by the detaining authority or not, has been examined by this Court in the matter of Gopal Ramchandra Shahu through Ramchandra K. Shahu versus State of Gujarat, Special Civil Application NO. 1692 of 1999 decided on 7.7.1999. The observations made by this Court in the said decision which are relevant and material for the purpose of present petition are reproduced as under:

" It is true that both the offences have been registered against the petitioner for violation of the prohibition law, however, nothing on record suggests that at the time of

> the raid, anything happened that would amount to breach of public order. Though the two witnesses have, on the assurance of anonymity, stated that the petitioner has been indulging into anti social activities which are detrimental to the maintenance of public order. What is disturbing is that the credibility of the witnesses and the correctness of the said statements have not been verified. Both the statements have been recorded on 1st September, 1998, and the impugned order of detention has been made on 2nd September, 1998. This, in my view, does not leave sufficient time for the police to test the credibility of the witnesses and the genuineness of the contents of their statements. I have noted that the detaining authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the detaining authority or any other officer would not be sufficient. Besides, the detaining authority has not made any counter affidavit to show whether such exercise had been undertaken or not. At least, in the present case, it is not possible to believe that the statements were duly verified, nor there is contemporaneous evidence to support the statements made by the witnesses. The detaining authority ought not to have relied upon the said statements, without proper verification, to record his subjective satisfaction in respect of the nefarious activities carried on by the petitioner. In absence of the said statements, there would not be any material to indicate that the petitioner's activities were prejudicial to the maintenance of public order."

In this case, the detaining authority has not examined the credibility of the witnesses whose statements were recorded by the authority concerned. In the aforesaid decision, this court has observed that mere formal verification made by the detaining authority or any other officer would not be sufficient to pass the impugned order of detention. Therefore, considering the law laid down by this court in the aforesaid decisions in light of the facts of the present case, according to my opinion, detaining authority has not applied his mind in respect of the credibility of the witnesses as well as whether the incident is real one or not and this has

vitiated the subjective satisfaction of the detaining authority and, therefore, impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeed and the same is allowed. The impugned order of detention dated 1.12.2002 is hereby quashed and set aside. The detenu BHAICHANDBHAI NARANBHAI SANSI detained at Bhavnagar District Jail, Bhavnagar be set at liberty if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct Service is Permitted.

Dt.11.6.2003. (H.K. Rathod,J.)
Vyas